United Nations CED/C/ALB/Q/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
8 March 2018

Original: English
English, French and Spanish only

Committee on Enforced Disappearances
Fourteenth session
22 May–1 June 2018
Item 6 of the provisional agenda
Consideration of reports of States parties to the Convention

List of issues in relation to the report submitted by Albania under article 29 (1) of the Convention

Addendum

Replies of Albania to the list of issues*

[Date received: 5 March 2018]

* The present document is being issued without formal editing.

Introduction

1. The Convention "On the Protection of All Persons from Enforced Disappearance"[1] has been ratified by the Republic of Albania (RoA)[2] by Law No. 9802, dated 13.09.2007.[3] Based on this law, the Republic of Albania declares that it acknowledges the competence of the Enforced Disappearance Committee[4] to accept and review communications submitted by persons or on behalf of persons under its jurisdiction, who allege that they are victims of violation of the provisions of such Convention by the Albanian State (Article 31 of the Convention). In addition, the Republic of Albania declares that it acknowledges the competence of the Enforced Disappearance Committee to accept and review communications through which a State Party alleges that another Party fails to comply with its obligations under the Convention[5] (Article 32).

2. Pursuant to Article 29 of the Convention, the Republic of Albania submits to the CED Committee the Second Report on the action undertaken for the implementation of the obligations set out in this Convention.

3. The Republic of Albania considers and evaluates the process of drafting the report and the reporting process as a means to guarantee compliance with the international obligations as an opportunity to introduce the situation of human rights within its jurisdiction in the framework of the implementation of the Convention, in order to take all necessary measures for the implementation of the Convention.

4. The report is drafted in accordance with the Committee Guidelines on Enforced Disappearance (CED), on the content and form of reporting.[6] Referring to the guidelines, the report is supplemented by the Common Basic Document,[7] introduced in 2012, in accordance with the aligned guidelines on reporting under the international human rights treaties.[8] The report is drafted in accordance with United Nations General Assembly Resolution A/68/268, dated 9.04.2014, on the drafting of the reports of the States Parties.

5. In the framework of drafting of this Report, the Ministry of Foreign Affairs, as the institution in charge for drafting national reports on human rights, has informed the competent institutions for drafting this Report.

6. The National Report on the implementation of the Convention "On the Protection of All Persons from Enforced Disappearance" has been adopted by Decision of the Council of Ministers.

7. The report contains information on the legal, general institutional framework for the prohibition of enforced disappearances, as well as information on the measures to be taken for the implementation of Articles 1-25 of the Convention.

8. Considering the compliance with and protection of human rights as one of the core priorities, Albanian institutions are committed to complying with the international obligations deriving from human rights conventions. Based on the Prime Minister's Order No. 112, dated 05.03.2014 "On the establishment of an inter-ministerial working group on drafting and review of reports within the framework of international human rights conventions", the Ministry of Foreign Affairs is in charge for the coordination of the process of drafting of the national reports on the implementation of the conventions on human rights,

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[1] Hereinafter referred to as Convention.

[2] Hereinafter referred to as RoA.

[3] This Law is published in the Official Gazette No. 125, dated 27.09.2007. The text is accessible in the website of the Official Publication Centre: http://www.qbz.gov.al/botime/fletore_zyrtare/2007/PDF-2007/125-2007.pdf.

[4] Hereinafter referred to as CED Committee.

[5] Articles 2 and 3 of Law No. 9802, dated 13.09.2007 "On the ratification of the international Convention of UN "Protection of all persons from enforced".

[6] CED/C/2; 8 qershor 2012.

[7] Basic Document HRI/CORE/ALB/2012 is accessible on the link: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2FCORE%2FALB%2F2012&Lang=en.

[8] HRI/GEN/2/Rev.6; 3 Qershor 2009.

including the report under this convention, in cooperation with state institutions and independent institutions.

The general legal framework for the prohibition of enforced disappearances

9. Albania is committed to the constant improvement of standards for the protection and compliance with the human rights and fundamental freedoms. In this context, priority is focused on the improvement of domestic legislation in line with international obligations. The Constitution of the Republic of Albania, ratified international agreements which are part of the domestic legal system, laws, normative acts of the Council of Ministers and subsidiary acts guarantee the implementation in practice of human rights. The Albanian legislation, which is constantly being improved and supplemented, constitutes a guarantee for the prevention of enforced disappearances, also reflecting the spirit of the Convention.

International instruments on enforced disappearances

10. The Republic of Albania is party to all international human rights conventions within the UN as well as a number of other international instruments, demonstrating its commitment to the fulfilment of international obligations in the field of human rights. The international instruments in which the RoA is a party to, which also deal with specific provisions that directly or indirectly provide for the prevention of enforced disappearances and are related to criminal legislation:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by law No. 8137, dated 31.07.1996), specifically the provisions (the right to life, prohibition of torture, the right to freedom and security); Its Additional Protocols (Protocols 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14). Concerning the death penalty, Law No. 9639 dated 09.11.2006 "On the ratification of Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms for the Abolition of the Death Penalty in All Conditions" was adopted. (it should be removed since the following was observed;
- International Covenant on Civil and Political Rights:
    - Optional Protocol to the International Covenant on Civil and Political Rights (adhered to by law No. 9725, dated 07.05.2007);
    - The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Adhered to by Law No. 9726, dated 07.05.2007);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adhered to by law No. 7727, dated 30.06.1993):
    - Optional Protocol to the Convention Against Torture OPCAT (ratified by law No. 9094, dated 03.07.2003), on the establishment of National Mechanisms for the Prevention of Torture;
    - European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (adhered to by Law No. 8135, dated 31.7.1996);
    - Rome Statute on the International Criminal Court (ratified by law No. 8984, dated 23.12.2002);
    - The European Convention on Extradition and the two additional protocols (ratified by Law No. 8322, dated 04.04.1998);
    - Council of Europe Convention "On the Transfer of Proceedings in Criminal Matters" (ratified by Law No. 8497, dated 10.6.1999);
    - Council of Europe Convention "On Mutual Legal Assistance in Criminal Matters" (ratified by law No. 8498, dated 10.6.1999;

- Council of Europe Convention "On the Transfer of Sentenced Persons" (ratified by law No. 8499, 10.6.1999);
- Geneva Convention of 1949 and its Additional Protocols;
- Albanian authorities have established effective cooperation with the European Committee for the Prevention of Torture (CPT). The CPT has conducted 10 monitoring visits in Albania.[9]

The status of the Convention within the domestic legislation

11. In the RoA, international law is entitled to a privileged position vis-à-vis domestic law and in this context, the Convention prevails over domestic law. The Constitution defines the obligation of the Albanian state to enforce international law. Pursuant to Article 122 of the Constitution, any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal. Article 122 of the Constitution provides that that international law directly applicable, except when it is not self-executing, and its application requires the adoption of a law. An international agreement ratified by law has priority over the laws of the country that are incompatible with it. Moreover, the norms issued by an international organization have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organization is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein.

12. Based on the general rules and principles of the application of legal norms, it can be concluded that entities may apply and request the application only of those articles of the Convention, the implementation of which is guaranteed by the current legislation and for which there is no need to establish internal mechanisms. Taking into account the obligations arising from this Convention, in cases where a specific article of the Convention requires the adoption of domestic legal provisions or the establishment of internal mechanisms (in cases where these are missing or are not appropriate) for the application of the norms/provisions of the Convention, the inclusion in the Criminal Code of the offence of "enforced disappearance "is noted, as well as other legal provisions. Pursuant to Article 122 of the Constitution, it is worth emphasising that this Convention is part of its legislation, however on the other hand, this Convention is not applicable to its provisions as a whole. For the implementation of its provisions under Article 122, it is necessary to identify the provisions that may be applied in domestic law, in accordance with the provisions of the Convention and the provisions to be applied in practice through taking all the specific measures. From a general overview of the actual domestic legislation, it can be concluded that some of the provisions of the Convention directly or indirectly apply to the domestic law.

Institutional framework (judicial authorities, institutions, national mechanisms) on protection and promotion of human rights

13. The Constitution provides for sanctions on the principle of separation and balancing of legislative, executive and judicial powers Judicial power is exercised by the High Court, the Appeal Courts and the courts of first instance, established by law. The Constitutional Court guarantees compliance with the Constitution and makes its final interpretation. It is also an important institution for the protection of human rights as it carries out the final judgement of individuals' claims of violation of constitutional rights for a regular legal process, after having exhausted all legal remedies for their protection.

14. In order to guarantee the protection of human rights and implementation of the legislation, a full legal framework on the organization and functioning of the judicial power has been adopted: Courts of the District Courts, Courts of Appeal, Supreme Court, Constitutional Court, First Instance Court for Serious Crimes, Military Courts, Administrative Court. Judicial authorities, which, according to their jurisdiction, also address matters relating to the content of the Convention are: The Constitutional Court, the Supreme

[9] Detailed information regarding the CPT monitoring visits is provided on the website: www.coe.int (Human rights/ Torture/European Committee for the Prevention of Torture).

Court, the District Courts, including the First Instance Court for Serious Crimes. The scope of work of the First Instance Court for Serious Crimes includes criminal offences provided for under the Criminal Code provisions, including the offence of enforced disappearance.

15. The Criminal Procedure Code provides that the Court is the body responsible for rendering justice. Regarding "criminal courts", it is provided that criminal justice is addressed by: First Instance Criminal Courts; Appeal Courts; Supreme Court. The First Instance Court for Serious Crimes is operational since 2004, having as the scope of its activity the fight against serious crimes and organized crime, as well as the qualitative and effective judgement of these criminal offences. The territorial jurisdiction of this Court includes the entire territory of the Republic of Albania and the scope of its work includes the offences provided for in the Criminal Code, also including cases when these crimes are committed by entities under the jurisdiction of the Military Court. The Military Court is competent for the adjudication of soldiers, prisoners of war and other persons for criminal offences provided for under the Military Criminal Code, other legal provisions, except those pertaining to the jurisdiction of the Court for Serious Crimes and the Supreme Court.

16. The institution of the Prosecution, based on the Constitution, exercises criminal prosecution and represents the charge in trial on behalf of the state. Law No. 8737, dated 12.02.2001 "On the Organization and Functioning of the Prosecution in the Republic of Albania" (as amended) stipulates that: "The Prosecution exercises criminal prosecution and represents the charge in trial on behalf of the state, takes measures and supervises the execution of criminal decisions, as well as other duties provided by law. Prosecutors exercise their duty in accordance with the Constitution, laws and their competences, in full compliance with the principles of fair, equal and regular legal process, protection of human rights and freedoms. The Prosecution is organized and operates under the lead of the General Prosecutor as a centralized structure, including the General Prosecutor's Office, the Prosecution Council and the Prosecution Offices within the Judicial System."

17. The mission of the State Police is to maintain the order, public safety and to guarantee law enforcement in accordance with the Constitution, international acts, in compliance with human rights and freedoms. The fulfilment of the State Police mission is related to the compliance with human rights and freedoms, in particular of persons deprived of their freedom, escorted persons, arrested persons and detainees in the police premises. The activity of the State Police is governed by the law and compliance with human rights and fundamental freedoms. The duties of the State Police are as follows: (a) the protection of people's lives, security and personal property; (b) maintaining of public order and security; (c) prevention, detection, investigation, in accordance with criminal law, criminal procedural law, criminal offences, perpetrators; (d) undertaking awareness raising campaigns and information campaigns aimed at preventing the commission of criminal offences, offences, increasing partnership with the public; (e) performing duties in accordance with the law.

18. The People's Advocate is a constitutional, independent institution which exercises its activity for the protection of the rights, freedoms, legitimate interests of individuals that may be affected by illegal and irregular acts/omissions of the public administration bodies and the third parties acting on its account. In the context of the Convention against Torture and its Optional Protocol, this institution exercises the powers of the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NMPT), guarantees in the exercise of its activity and forms of surveillance.[10] The Law "On the Rights and Treatment of detainees and pre-detainees" provides that the NMPT, which supervises the implementation of the law on the protection of human rights, acts as a separate structure under the authority of the People's Advocate. It introduces recommendations to relevant bodies aiming to improve the conditions and treatment of prisoners. The amendments to the Law "On the People's Advocate" (Law No. 155/14) provide for the establishment of the NMPT, as a separate session with the Office of the People's Advocate. The People's Advocate exercises the functions of the NMPT in accordance with the Constitution and international acts ratified by the domestic law of the Republic of Albania.

[10] Law No. 9888, dated 10.03.2008, provides for several provisions adopted under Law No. 8328, dated 16.4.1998 "On the Rights and Treatment of Prisoners", setting out the competencies of the NMPT. Information on the NMPT is provided below.

19. An important institution for the protection of human rights is the institution of the Commissioner for the Protection against Discrimination (CPD), which is established and operates in compliance with Law no.10221, dated 4.2.2010 "On Protection against Discrimination". The law provides for the rights of each person to: a) equality before the law, equal protection by law; b) equality of chances, opportunities to exercise and be entitled to rights and freedoms, participation in public life; c) effective protection against discrimination, any form of conduct that incites discrimination.[11]

Information on the measures undertaken for the implementation of the issues and recommendations submitted by the Committee for Enforced Disappearance

Recommendation II. Determination and criminalization of enforced disappearance (Articles 1-7)

20. With regards to the guarantee of human rights and cases of their restriction, the Constitution of the Republic of Albania provides that:

- Article 15 – provides that human rights and freedoms are indivisible, inalienable, and inviolable and stand at the base of the entire juridical order. As a constitutional obligation, all institutions, organs of public power, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization;
- Article 17 – stipulates that limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights;
- Article 25 – provides that no one may be subjected to torture, cruel, inhuman or degrading punishment or treatment;
- Article 27 – provides that no one's liberty may be taken away except in the cases and according to the procedures provided by law.

21. The Constitution of the Republic of Albania regarding extraordinary measures to be imposed due to the state of war, state of emergency or state of natural disaster shall last for as long as these conditions persist. The principles of the activity of public bodies and the extent of the restriction of human rights and freedoms during the period of existence of situations requiring extraordinary measures and the manner of compensation as a result of these restrictions are defined by law. Acts that are undertaken as a result of the extraordinary measures taken, must be proportionate to the degree of risk and restore of the conditions for normal functioning of the state as soon as possible. The Constitution sets out the provisions on the protection of life, equality before the law and non-discrimination and non-limitation of fundamental rights and freedoms, prohibition of torture, punishment or other cruel, inhuman or degrading treatment, political rights, economic and social rights during the extraordinary state of war.

22. Based on the Albanian legislation, there is no law on the state of war or internal political instability aiming to govern or justify the violation of the rights of persons who are detained or arrested, thus justifying or authorizing the enforced disappearance, arrest, imprisonment, abduction or any form of deprivation of freedom, torture, inhuman or degrading treatment. In these cases, the same provisions as the legislation in force shall apply. Law No. 108/2015 "On the State Police", paragraph 3 of Article 4 provides that the state police status shall not change even in state of war, state of emergency or natural disaster. According to this law, one of the basic principles under which the activity of the state police is governed is compliance with human rights and fundamental freedoms. The law provides for measures for maintaining public order and security.

[11] Detailed information on national institutions and mechanisms for the protection and promotion of human rights is provided under the Basic Document of Albania (paragraphs 87-104).

23. Regarding the provision of the crime of enforced disappearance as a crime against humanity, in accordance with the obligations of Article 5 under the Convention, the Criminal Code provides for "enforced disappearance" as a crime against humanity with the corresponding sanctions and the widespread and systematic exercise of enforced disappearance as a crime against humanity, therefore Article 74 of the Criminal Code specifically provides that:

> Murder, enforced disappearance, extermination, enslaving, internment and expulsion and any other kind of human torture or violence committed according to a concrete premeditated plan or systematically, against a group of the civil population for political, ideological, racial, ethnical and religious motives, shall be punishable to not less than fifteen years of or life imprisonment.

24. Concerning criminal offences similar to the provisions of Article 3 of the Convention, the national criminal legislation is the same as the legislation mentioned in the state report, therefore there are no changes to the previously mentioned provisions. With regard to paragraph 53 of the report, it is clarified that domestic criminal law provides for some offences of similar elements to mandatory disappearance, but do not have the second element of this offence, namely that conduct is carried out by the state agent or by persons or groups of persons acting with the authorization, support or acknowledgement of the state. As already mentioned, there are no cases related to these criminal offences.

25. Concerning the compliance of our legislation with Article 6 of the Convention regarding the Criminal Liability regime, the Criminal Code provides for a number of offences when committed by a person performing a state function. Specifically, the Criminal Code provides for the criminal responsibility under Article 109/c regarding the crime of enforced disappearance by the superior who:

(a) Is aware that the dependent under his authority and effective control are or are about to commit the enforced disappearance, or who does not take into account data and information which clearly point to this fact;

(b) Exercises his effective responsibility and control over the activities to which the enforced disappearance is linked with; or

(c) Does not take all the necessary and reasonable measures under his/her competence to prevent or punish the person who issues the authorisation, support, and approval of the enforced disappearance or to send the case to the competent bodies of criminal prosecution, shall be punished by three to seven years of imprisonment.

26. Based on the foregoing, the domestic legislation sets out the principles of criminal obligations in accordance with the applicable international law.

27. Moreover, as mentioned in paragraph 61 of the state report, the Criminal Code provides for the criminalization of different types of offences and criminal offences and sanctions, committed by officials assigned in state function or in public service, providing that:

> **Article 21**
> **Exercising a right or fulfilling the duty**
>
> No one shall be held criminally liable while acting to exercise rights or fulfil duties determined by law or an order issued by a competent authority, unless the order is obviously unlawful.
>
> Where the criminal offence was committed as a consequence of an unlawful order, then the person issuing the order shall be held liable.
>
> **Article 250**
> **Committing arbitrary actions**
>
> Commitment of arbitrary actions or arbitrary order-giving, by an official performing a state or public service function while exercising his duty, which affect the freedom of citizens, is punishable by a fine or imprisonment of up to seven years.

Article 251
Failure to take measures to sever illegality

Failure of a person in charge of a state or public service function to take measures, who becomes aware of the illegality due to the function or service, or failure to request a competent person to sever illegality resulting from an arbitrary action that has affected the freedom of citizens, is punishable by a fine or up to three years of imprisonment.

28. Regarding the information required if our legislation provides as an aggravating circumstance when the offence is committed by state officials, we can say that this provision is included in our legislation since one of the aggravating circumstances under the Criminal Code is when the offence is committed due to abusive actions in exercising public functions or religious services.

29. Regarding the information required for cases of co-operation or participation to commit the enforced disappearance and responsibility of each collaborator, the Criminal Code provides that:

Article 25
Meaning of complicity

Complicity shall be the commission of the criminal offence by two or more persons in agreement with each other.

Article 26
Accomplices

The accomplices in committing a criminal offence shall be: the organizers, executors, instigators, and helpers. Organizers are those persons who organize and manage the activity to commit the criminal offence. Executors are those persons who carry out direct actions to carry out the criminal offence. Instigators are those persons who instigate the other accomplices to commit a criminal offence. Helpers are those persons who, through advice, instructions, provision of means, abolition of obstacles, promises to hide the accomplices, traces or proceeds stemming from the criminal offence, help to carry it out.

Article 27
Liability of accomplices

Organizers, instigators, and helpers shall be liable same as the executors for the criminal offence committed by them.

In determining the sentence for the collaborators, the court should consider the extent of participation and the role assumed in committing the criminal offence.

30. Regarding the information required when a dependant can legally oppose an order to carry out enforced disappearance and the legal recourse available to a dependant, the legal framework provides that: One of the principles of the Code of Administrative Procedures is the principle of legality. According to this principle, public bodies exercise their activity in compliance with the Constitution of the Republic of Albania, the ratified international agreements and the legislation applicable in the Republic of Albania within the limits of competence and in accordance with the purpose for which such competences are conferred. The lawful rights or interests of a party cannot be jeopardised by an administrative action, except when provided by law and in compliance with a regular legal process.

31. Law No. 108/2015 "On State Police" provides as follows:

Article 86
Obligation to comply with the order

1. The police officer is obliged to enforce all legitimate orders issued by a senior officer in office or rank.

2. The police officer, if there is any reason to suspect that the order issued is illegal, immediately informs the superior and, where applicable, requests in writing that the order be given in writing. In any case, when there is a verbal or written request

for the issuance of a written order, the superior is obliged to proceed upon written request.

3. In cases where failure to execute the order until its written issuance, according to point 2 of this article, endangers the life of another person, the police officer must execute the order.

4. When a police officer, even upon execution of the procedures set out in this Article, continues to have grounds for suspecting that the order is illegal, he/she shall act as following:

(a) Rejects the order, except for the cases provided for in paragraph 3 of this Article;

(b) Immediately informs the police officer, who directly exercises in a higher function than the superior who has issued the order, as well as the measures taken by him for the execution of this article.

5. The procedures for issuing, transmitting and administering the order are set out in the Police Regulation.

32. Law No. 10032, dated 11.12.2008 "On Prison Police" as amended, also provides that:

Article 9
Hierarchical and Functional Reports

1. Prison Police officers are required to enforce the orders given by the superiors, in accordance with the functional scale and in equal positions, according to the rank hierarchy. Orders should be issued in accordance with the functional duty and in compliance with the law and the dignity of the person to whom they are addressed.

2. In the absence of a direct superior, in case of an emergency and when there is no possibility of communicating with senior officers, the higher-ranking official shall be entitled to issue order for equal or lower rank officials.

Article 10
Way order execution

1. The Prison Police official must enforce all orders issued to him by his superiors, unless the order is in violation with the law, in any case, based on law and evidence.

2. If the Prison Police officer considers a verbal order as illegal, he must immediately inform the superior and request that the order be given in writing.

3. In cases when from the communication of the order, up to its issuance in writing, according to point 2 of this article, the life of another person is endangered, the Prison Police officer shall execute the order.

4. If the Prison Police officer, even after the implementation of the procedures under points 2 and 3 of this Article, continues to have grounds to suspect that the order is unlawful, he shall reject the order and immediately inform the superior of the officer who has issued the order, as well as the measures taken by him.

5. In any case, for any order issued, the officer who issued the order and the officer who executed the order shall be responsible, in case the latter failed to comply with the provisions of this article. These cases constitute a cause for the initiation of disciplinary proceedings against them.

33. Concerning Article 1, we hereby clarify that the Albanian legislation provides for enforced disappearance as a criminal offence under the Criminal Code, namely Articles 74 and 109(c) of the Criminal Code, in accordance with the definition provided for in the 1992 Declaration on the Protection of All Persons from the Enforced Disappearance, which condemns it by appropriate penalties that take into account the extreme severity of such offence. Regarding the statutory limitations of criminal prosecution in Albania, according to the provisions of the general part of the Albanian Criminal Code, Chapter VIII provides for the extinction of prosecution, punishment and non-execution. Based on the amendments to the legal package, in the framework of the Justice Reform, the obligations of Article 8 of the

Convention are reflected in Article 66 of the Criminal Code, regarding the measures that States Parties must take to enforce a regime of provision of enforced disappearance so that the provision of criminal prosecution be long-term and proportional to the extreme danger of this crime. Thus, Article 66 of the Criminal Code, following the above amendments, doubled the statutory terms for all criminal offences, especially the most serious ones, including Article 109/c. Also, Article 67 of the Criminal Code regulates the fact that the prosecution of war crimes and those against humanity is not prescribed, as reflected in the special section of this code, Chapter I, crimes against humanity.

34. Concerning Article 1 of the Convention, regarding the guarantee of the right not to be subject to enforced disappearance during a state of war, threat of war, etc., in Law No. 108/2014 "On the State Police", the responsibilities of the State Police are defined. As following:

(a) The protection of people's lives, security and personal property;

(b) Prevention, detection, investigation, in accordance with criminal law, criminal procedural law, criminal offences, perpetrators.

35. Such a thing is defined as: "The status of the Police does not change even in the state of war, state of emergency or natural disaster.." It is worth mentioning the turbulent/aggravated period of public security order of 1997, where State Police structures, despite the difficult situation they faced, took all necessary measures to fulfil the mission and legal responsibilities for the protection of life/health, property of the person, etc.

36. As regards Article 2 of the Convention, in Law No. 144/2013 "On some amendments and additions to Law No. 7895, dated 27.01.1995 "Criminal Code of the Republic of Albania", as amended, article 109/c was added to article 109/b of the Criminal Code, which defines "Enforced disappearance "as a separate criminal offence. The definition of this criminal offence was drafted in full compliance with the definition of article No. 2 of the Convention in question, subject to all of its elements.

37. With regard to Article 4 of the Convention, the domestic criminal law of our country has integrated the prosecution and the fighting of "Enforced disappearance", defining it as a criminal offence other than torture, abolition of freedom, and other similar offences. Article 109/c of the Criminal Code of the Republic of Albania (with the additions and amendments of 2013), enforced disappearance is defined as follows:

> Enforced disappearance through arrest, detention, abduction or any other form of deprivation of liberty of the person by public officials or persons acting upon their authorisation, support or approval, followed by the non-acceptance of the deprivation of liberty or by concealment of the fate or whereabouts of the person, by denying the assistance and necessary protection in compliance with the law, shall constitute criminal offence and it shall be punishable by imprisonment from seven to fifteen years. "When such offence is committed against children, pregnant women, or persons who because of different reasons cannot protect themselves, or when such offence causes serious physical suffering, it is committed in complicity, against several persons or more than once, it shall be punishable by imprisonment from ten to twenty years. When such offence causes the death of a person it shall be punishable by imprisonment of not less than thirty years or with life imprisonment.

38. With regard to Article 7 of the Convention, the provision of Article 109/c of the Criminal Code also lays down the sanctions for the persons subject to the commission of the "Enforced Disappearance" offence, in accordance with international standards, the danger imposed and the consequences arising from this criminal offence. This provision specifies punishments/sanctions for each relevant paragraph, sanctioning at least five years of imprisonment and the maximum "life imprisonment". As far as the above, be informed that since 2015, no case of "Enforced disappearance" has been registered in the territory of the Republic of Albania.

Recommendation III. Judicial Procedure and Cooperation in Criminal Matters (Articles 8-15)

39. For the enforcement of the statute of limitation of enforced disappearance for the necessary measures taken by the state for the long-term period of statutory limitation of the criminal prosecution and the proportion to the extreme danger of this crime, pursuant to Article 66 of the Criminal Code, the statutory limitation is calculated from the moment of the commission of the offence (in this case, the time of enforced disappearance) until the person is kept as defendant. Whereas as far as criminal prosecution is concerned, article 67 of the Criminal Code provides for the non-predication of criminal offences of war crimes and those against humanity, categories of offences which include enforced disappearance:

> **Article 67**
> **Non-applicability of statute of limitations to criminal prosecution**
>
> Not subject to the statute of limitation shall be the war crimes and crimes against humanity.
>
> Concerning the implementation of Article 109/c prior to the application of such provision, Articles 2 and 3 of the general principles of criminal law provide for the retroactive effect of the law and no penalty without a law.
>
> **Article 2**
> **No penalty without a law**
>
> No one shall be criminally punished for an offence, which is not already explicitly provided for by law as a crime or a criminal contravention.
>
> No one shall be sentenced to a type and extent of penalty that is not provided for by law.
>
> **Article 3**
> **Operation of the criminal law in time**
>
> No one shall be sentenced for an offence, which, according to the law at the time it was committed, did not constitute a criminal offence.
>
> A new law not incriminating an offence has retroactive effect. If the person has been sentenced, the enforcement of the sentence shall not commence and, if it has commenced, it shall cease. If the law in force at the time when the criminal offence was committed, and the subsequent law are different, the law, the provisions of which are more favourable to the person having committed the criminal offence, shall apply.

40. Regarding the reporting and compliance of our legislation with the Convention on the necessary measures to establish its competence for the purpose of recognizing a crime of enforced disappearance, Article 6 of the Criminal Code provides that the offences committed by Albanian citizens within the territory of the Republic of Albania are subject to the criminal law of the Republic of Albania. Also, the criminal law of the Republic of Albania is also applicable to an Albanian citizen who commits a crime in the territory of another state, when the crime is simultaneously punishable and provided that no final decision is issued by a foreign court. In the meaning of this article, other persons also having other citizenship other than the Albanian one, will be considered as Albanian citizens. This provision indicates that the Convention is applicable due to the fact that enforced disappearance is foreseen as a criminal offence under the Criminal Code and this code establishes the jurisdiction for the trial of a person charged with the offence of enforced disappearance, regardless of who has committed the offence or in which territory it has been committed. According to Article 5 of the Criminal Code, the Territory of the Republic of Albania, in terms of criminal law, includes the territorial area, the territorial and inland waters and the sea, the air space extending over the land and the territorial and inland sea waters, and any other territory where the sovereignty of the Albanian state is extended, such as headquarters of Albanian diplomatic and consular missions, ships flying the flag of the Republic of Albania, military navy ships, military or civil aviation wherever they are. Article 7 of the Criminal Code provides that the foreign citizen, committing a criminal offence within the territory of the Republic of Albania, shall be held liable under the criminal law of the Republic of Albania. The criminal law of the Republic of Albania shall also be applicable to a foreign citizen

committing one of the following crimes against the interests of the Albanian State or citizen outside the territory of the Republic of Albania: a) crimes against humanity. The application of universal jurisdiction is also provided for in the Criminal Code, where pursuant to article 7/a: "the criminal law of the Republic of Albania shall also be applicable to a foreign citizen committing one of the following crimes against the interests of the Albanian State or citizen outside the territory of the Republic of Albania: (a) crimes against humanity; (b) war crimes; (c) genocide; (d) terrorist offences; (e) torture; (f) financing of terrorism. Also, the Criminal Code of the Republic of Albania is applicable to a foreign citizen who, outside the territory of the Republic of Albania, commits any of the offences for which special laws or international agreements, where the Republic of Albania is a party to, determine the applicability of Albanian criminal legislation."

41. Article 8 of the Criminal Code provides that in connection with a stateless person committing a criminal offence within the territory of the Republic of Albania or a crime abroad, the provisions of Articles 7 and 7/a of this Code shall apply.

42. Article 9 of the Criminal Code provides that the provisions of this Code shall also apply to criminal offences committed against internationally protected persons. An internationally protected person shall, unless international agreements ratified by the Albanian state provide for otherwise, include:

(a) The head of a state, including a member of the collegial body performing the functions of the head of state, under the constitution of that state, the head of the government or the minister for foreign affairs, where the latter are in another state, and the family members accompanying them;

(b) A representative or official of a state, or an official or agent of an international organisation having an intergovernmental character, who, at the time and venue of the commission of the offence against him, his office, private residence or means of transport, enjoys, in accordance with the international law, special protection against any assault on his person, freedom and dignity, as well as on the members of his family.

43. Considering that under the Criminal Code enforced disappearance is considered as a criminal offence, in the case of a charge for such a criminal offence, no immunity is taken into account.

44. Pursuant to domestic law, military authorities shall be in charge for the investigation and prosecution of persons charged with enforced disappearance and for defining which jurisdiction is competent to judge the crime of enforced disappearance when carried out by the military under the Criminal Procedure Code. In compliance with the domestic law, the military authority shall not have the competency to investigate and prosecute persons charged with enforced disappearance, however, the prosecutor is entitled to investigate and adjudicate for these crimes. He exercises criminal prosecution and represents the charge in trial on behalf of the state, directs and controls the preliminary investigations and the activity of the judicial police, and performs any investigative action that is deemed necessary, takes measures for the execution of criminal decisions, supervises their execution, and exercises the functions of judicial cooperation with foreign authorities, according to the rules set forth in the Code of Criminal Procedure. According to article 14 of the Military Criminal Code, when a soldier commits a criminal offence not provided for in this Code, he will be responsible under the provisions of the Criminal Code (Civil Code). Thus, when the crime of enforced disappearance is carried out by a military, the ordinary court shall have jurisdiction to adjudicate the offence. The powers of the military court are abolished by law No. 9911, dated 05.05.2008.

45. Concerning the provisions of Articles 12 and 18 of the Convention regarding the right of any person who claims to have been a victim of enforced disappearance to report to the competent authorities, it is hereby noted that the Criminal Procedure Code guarantees the rights of the victim, however such rights should be in compliance with the statute of limitations:

Article 9/a
Rights of the party injured from the criminal offence

(Supplemented by law No. 35/2017, dated 30.3.2017)

1. During the criminal proceeding, the victim has the rights provided by this Code.

2. Public bodies should ensure that victims of the offence are treated with respect for their human dignity and are protected from violation while exercising the rights provided for under this Code.

Article 58
Rights of the party injured from the criminal offence

(Added point 3 by law No. 8813, dated 13.6.2002 and amended by Law No. 35/2017, dated 30.3.2017)

(a) To seek the prosecution of the guilty person;

(b) To be provided with medical care, psychological assistance, counselling and other services provided by the authorities, organizations or institutions responsible for assisting the victims of the offence;

(c) Communicate in his/her language and be assisted by an interpreter, sign language interpreter or facilitator of communication for persons speaking and hearing impairments;

(d) To appoint a lawyer and, where appropriate, to benefit from free legal aid, according to the legislation in force;

(e) To request at any time information on the state of the proceedings, as well as to be acquainted with acts of evidence, without prejudice to the principle of confidentiality of investigations;

(f) To request evidence, and to file further requests before the proceeding authority;

(g) To be informed about the arrest of the accused and his release, under the conditions set forth herein;

(h) To be notified of the non-initiation of the proceedings, the dismissal of the case, the commencement and conclusion of the trial;

(i) to file an appeal in court against the decision of the prosecutor to stop the proceedings from starting and against the decision of the prosecutor or the judge of the preliminary hearing session to cease the charge or the case;

(j) To request damage compensation and be accepted as a civil claimant in the criminal process;

(k) To be excluded, under conditions stipulated by law, from the payment of any expenses for obtaining acts and court fees for filing a petition relating to the status of the victim of the offence;

(l) To be summoned to the preliminary hearing session and at the first hearing session;

(m) To be heard by the court, even when none of the parties has requested him/her as a witness;

(n) To exercise other rights provided by this Code.

2. The proceeding body immediately notifies the victim of the rights referred to in paragraph 1 of this article and keeps record of their notification.

3. A victim who has no capacity to act, exercises his/her rights through his or her legal representative or custodian, unless this is not in the victim's interest. In case of discrepancies between the interests of the victim and those of the legal representative or custodian, the court assigns a special custodian, in accordance with the provisions of the Family Code.

4. The heirs of the victim have the rights provided for in paragraphs 1, 2, 3, 4, 5 and 6 of this Article. If the heir of the victim is a minor, he/she is represented by the legal custodian.

Article 58/a
Rights of the minor injured party

(Supplemented by law No. 35/2017, dated 30.3.2017)

1. In addition to the rights provided for under Article 58 and other provisions of this Code, as well as special legislation for minors, the minor shall be entitled to:

(a) Be accompanied by a person trusted by him;

(b) Preserve the confidentiality of personal data;

(c) Request, through the representative, that the trial takes place without the presence of the public.

2. The proceeding authority should treat the minor victim of the criminal offence, taking into account the age, personality and other circumstances in order to avoid harmful consequences for his/her future development and education.

3. If there is a possibility that the victim is a minor and the age of the victim is unknown, it is presumed that he/she is a minor.

4. The minor victim is questioned without delay by specialized persons for this purpose. Where applicable and appropriate, the conversation shall be recorded by means of audiovisual media, as provided for in this Code.

This registration may be used as evidence in criminal proceedings and assessed together with other evidence, according to the criteria provided for in paragraph 4 of Article 361/a of this Code. When the minor is under the age of 14, the conversation takes place in environments tailored to him.

Article 279/a
The right of the victim to information

(Supplemented by law No. 35/2017, dated 30.3.2017)

1. For legitimate reasons, the victim, legal representative or his or her lawyer shall be entitled to request information on the status of the proceedings and to be informed and receive copies of the acts and evidence included in the prosecutor's file.

The prosecutor may refuse the request when:

(a) The interest in maintaining the confidentiality of the investigation exceeds the victim's interest;

(b) The interests of the defendant exceed the victim's interest;

(c) The victim has not yet been questioned as a witness.

2. The victim, his legal representative or his/her lawyer shall be entitled to seek information regarding the deployment, continuation, replacement or removal of security measures against the defendant, unless notification of these facts may endanger the life or health of the defendant.

46. Article 18 of the Convention pays major importance to the guarantees provided to the person deprived from his freedom, and the obligation of the authority in charge to document his activity regarding the deprivation of the freedom of a person, therefore the Criminal Procedure Code provides for:

Article 34/B
The rights of arrested and detained person

(Added by Law No. 35/2017, dated 30 March 2017)

1. In addition to the rights provided herein paragraph 1 of Article 34 / a of this Code, the "a", "b", "c", "ç", "d", "dh" and "e" , an arrested person or a detainee is entitled to:

(a) Meet alone with his/her defense counsel before the first interrogation;

(b) To be acquainted with the necessary acts, evidence and reasons for his/her arrest or detention;

(c) Request that a family member or another close relative be immediately informed of his/her arrest. If the arrested or detained is a foreign citizen, he / she shall be entitled to request the consular or diplomatic representation of his country, and if he/she is a stateless person or a refugee, he / she shall be entitled to request that an international organization is informed;

(d) Immediately obtain the necessary medical care.

2. The proceeding authority shall immediately notify the arrested or detained person arrested for the rights provided for in paragraphs "a", "b", "c", "ç", "d", "dh" and "e"1, of Article 34/a of this Code, granting following the signature, the rights card in a written form. The person shall be entitled to hold the rights card.

Functions of the judicial police in cases of arrest or detention

(Point "1" amended by law No. 8813, dated 13.6.2002) (Added sentence at point 1 and word at point 4, added point 3 and amended point 2 by law no 35/2017, dated 30.3.2017).

1. Judicial police officers and agents who have made an arrest or detention or have taken over the arrested person shall immediately notify the prosecutor's office of the place where the arrest or detention was conducted. They inform the arrested or the detainee that he has no obligation to make a statement and if he/she speaks, whatever he/she says can be used against him at trial. Judicial police officers and agents inform the detainees or arrestees of the right that are entitled to be represented by a defense counsel and immediately notify the defence council or, where appropriate, the attorney appointed by the prosecutor. The date, time and name of the judicial police officer who has conducted the arrest or detainment shall be filed in the database record.

2. Judicial police officers and agents shall immediately inform the arrested or detained person for the reasons of arrest or detention and his / her rights under Article 34/b of this Code, unless this is absolutely impossible due to the circumstances.

3. When an arrested person or a detainee is ill or underage, the prosecutor may order that he/she be kept in custody in his or her residence or other guarded place. When the arrested person or the detained person has not been granted a rights card, it is immediately given to the detention center. If the arrested or detained can not read, the rights letter is read by one of the attendees. This fact is filed in the record by signature.

4. The judicial police, with the consent of the arrested or detained person, must promptly notify the family members. When the arrested or the detainee is a minor, it is an abligation to notify the parent or the child caretaker as well in compliance with the rules of the Juvenile Justice Code apply.

47. Also, the rights and treatment of prisoners are regulated in particular in Law No. 8328, dated 16.4.1998, "On the Rights and Treatment of Prisoners and Detainees", as amended. Law No. 8331/1998 "On the Execution of Penal Decisions", as amended, foresees the conduct of control by the Prosecutor, inter alia, also through the search of direct information and verifications on documents or in the Institution for the Execution of Criminal Decisions in the presence of the respective official person.

48. Article 74/1 of Law No. 8328, dated 16.04.1998 "On the Rights and Treatment of Prisoners and Detainees" amended, provides that "The National Mechanism for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, which supervises the implementation and enforcement of the law for the protection of human rights" acts as a special structure under the authority of the People's Advocate who presents recommendations to the relevant bodies in order to improve the conditions and treatment of prisoners.

49. Also with the Decision of the Council of Ministers No. 437 dated 20.05.2015 was approved the new General Regulation of Prisons. This regulation comes in alignment with the developments in the prison system as part of the justice reform and guarantees respect for the rights and fulfilment of the obligations for the treatment of persons with limited freedom. The provision of special rules to ensure that all records of prisoners are kept and administered in accordance with standard procedures and the provision of personal data protection constitute important aspects of the new General Prison Regulation.

50. If domestic legislation provides for the suspension of duty for state officials after having committed or being involved in committing enforced disappearances, the Law "On Prison Police", Article 42 specifically provides that in cases where a Prison Police officer is under criminal responsibility for a crime, is suspended from the official function until the end of the process. Regarding the question of whether the competent authorities are ex officio investigating cases of enforced disappearance, in compliance with our legislation we can say that the competent authorities ex officio investigate cases of enforced disappearance due to Article 284 of the Criminal Procedure Code which provides that criminal offenses which are prosecuted by appeal, no criminal offense of enforced disappearance is foreseen in the circle of criminal offenses prosecuted, and for this reason, this criminal offense is mainly prosecuted with the prosecutor being informed and the police on their own initiative by reports made by others.

51. As regards Article 10 of the Convention, persons who are foreign nationals who are arrested / detained as suspects or offenders/accomplices for the commission of the offense of "Enforced Disappearance" have been guaranteed and are entitled to the right to have and receive consular assistance. These persons, up to the examination and evaluation of the security measure by the respective court, are held and treated in the premises of the State Police security rooms.

52. In the "Manual of Standard Rules and Procedures for the Treatment and Detention of Arrested/Detained Persons in Police Units", approved by Order No. 763, dated 27.09.2011 of the General Director of State Police in Chapter III, where the rights and obligations of the arrested/detained are determined, the right of foreign nationals such as: "Foreign nationals have the right to contact with representatives of the Diplomatic Representation of their country and, in their absence, with representatives of that State that has assumed the protection of the rights of the respective state.".

53. Also in the obligations that the local and central structures of the State Police have to guarantee the rights of the arrested/detained persons, it is stipulated that "... it is the obligation of the State Police to immediately notify the respective Diplomatic Representation in cases of arrests/detentions of foreign nationals".

54. The Albanian Government in 2016 has undertaken a comprehensive Justice Reform, starting with important amendments to the Constitution (amended by Law No. 76/2016), and continuing with changes throughout the criminal law package. As a result, the position of the Prosecutor of the Albanian Prosecution Office has changed.

55. In this framework, with the entry into force of the new law No. 97/2016 "On the Organization and Functioning of the Prosecutor's Office in the Republic of Albania", the prosecutor exercises functions independently, thereby guaranteeing greater effectiveness and impartiality in investigation and decision-making.

56. The Prosecutor's Office in accordance with the obligations deriving from Articles 12 and 24 of the UN International Convention "On the Protection of All Persons from Enforced Disappearances", when the omitted evidence creates reasonable doubts that a person has b n the victim of an enforced disappearance, has the legal obligation to investigate matters mainly.

57. Regarding the competence of the subject matter of investigation and trial in the Albanian legislation, the only criminal prosecution authority is the Prosecutor's Office. On the other hand, no other law enforcement authority other than the Prosecutor's Office, whether military or not, has no power to investigate or adjudicate enforced disappearances. Likewise, there is no case provided by law or by the Constitution that may recognize a given military institution the possibility of obtaining this competence under certain circumstances such as war or state of emergency. We emphasize that the Prosecutor's Office is also

competent to review the criminal offenses provided by the Military Penal Code and committed by the military. Regarding paragraph 125 of the Albanian State Report we clarify that the Albanian state is a party to the Council of Europe's Extradition Convention and the two additional protocols since 1998.

58. The Albanian criminal law permits the extradition of perpetrators of the offense of enforced disappearance based on the two conditions provided by Article 11 of the Criminal Code respectively a) the extradition provision in an international agreement where the Albanian state is a party and b) the criminal offence for which the extradition is conducted, is provided both by Albanian and foreign law. Regarding the legal remedies to immediately initiate investigations for cases of enforced disappearances, we clarify that in principle the Prosecution has the obligation to initiate criminal investigations, even on its own initiative, whenever it receives information about the occurrence of a criminal offense, regardless of type. This obligation of the Prosecution extends equally to the offense of enforced disappearances whether it is foreseen under Article 109/c of the Criminal Code, or when it is provided for in Article 74 of the Criminal Code, as part of a crime against humanity. In the case of Article 74 of the Criminal Code, the Prosecution has the obligation to initiate investigations immediately, even by initiative, as in the case of foreign perpetrators or when they are Albanians, as well as in cases whether the offense has occurred outside the territory of Albania even when it has occurred within inside the territory, as this offense is included in universal jurisdiction, as foreseen in Article 7 of the Criminal Code. Regarding the training of prosecutors, currently the General Prosecutor's Office does not have a specific sector or group of prosecutors with specific training on the investigation and prosecution of enforced disappearances. Under the legislation in force, each district-level prosecutor's office is entitled to complete independence in initiating criminal prosecution, including cases of enforced disappearances. Following the reform of the Prosecutor's Office since August 2017, prosecutors are independent in their decision-making in relation to prosecutors of a higher hierarchical status and in principle are entitled to full competence to initiate investigations even to the respective executives. On their part, the higher-level prosecutors no longer possess the power to order the prosecutor to quit the case nor replace it with another prosecutor. These competences actually belong only to the High Council of Prosecution. Regarding the possibility of conduction an investigation in the places where it is suspected that the missing persons are kept, criminal legislation provides for the possibility of the Judicial Police officers carry out searches in urgent cases, without the need for intervention by a judicial authority.

59. Procedures for urgent searches are filed to the prosecutor for validation within 48 hours. Regarding the suspension from duty of the suspected persons involved in an enforced disappearance, the criminal procedure legislation in Article 240 provides for the suspension from duty as a security measure, under the circumstances when the keeping the suspected person in duty endangers and incentivizes the commitment of similar criminal offences or other serious crimes.

Recommendation IV. Measures to Prevent Enforced Disappearances (Articles 16-23)

60. As regards Article 17 of the Convention, all detained or arrested persons by the judicial police service as suspected or authors/accomplices for the commission of the offense of "enforced disappearance" but also for other offenses committed by Albanian citizens, foreigners or stateless persons, are held and treated in the premises of legally recognized public institutions.

61. Arrested/detained persons, up to the examination and assignment of the security measure by the court organ, are kept in the premises of the security rooms of the Local Police Directorates and Police Commissariats.

62. These premises have been officially presented to the General Prosecutor's Office and Judicial District Prosecutor's Office, the People's Advocate, civil society organizations that protect human rights and in particular to those deprived of their freedom, such as:

- The Albanian Helsinki Committee;
- European Institute of Tirana;

- Albanian Rehabilitation Centre for Trauma and Torture;
- Center for Human Rights in Democracy;
- OSCE, PAMECA mission, ICITAP program;
- Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), etc.

63. After the imposition of the security measure "Arrest in prison" the arrested/detainees are transferred to the Institutions of Criminal Decisions Executions subordinate to the Ministry of Justicy. The Constitution of the Republic, the Criminal Procedure Code, the Law "On State Police" have defined and guaranteed the legal rights of persons deprived of their freedom such as:

- Choice of attorney and protection;
- Providing visits / controls and medical assistance;
- Notifying and informing these persons of their rights;
- Notifying and alerting family members, relative or other person chosen by him;
- Notification and informing the diplomatic representation of the state belonging to the arrested/detained citizen and allowing meetings with the latter;
- Submission of requests/complaints from persons deprived of their freedom in the police premises.

64. At the very first moments of deprivation of freedom (arrest/detention), judicial police officers communicate to the person that he/she is entitled to the right to be represented by a lawyer and not to speak without his presence, and if he/she speaks, the statements shall be used against him/her in court, etc. Defense attorneys are provided the conditions to be present during the arrest/detention as well as to meet at any time with their clients in the premises of the security rooms without the presence of other persons.

65. The right to be visited and examined by a doctor is realized and continues to be implemented in practice, where immediately after the arrest or detention, but no later than 12 hours, these persons are subject to medical check-ups and visits of the medical staff of the local police directorates, despite the fact that the person might not suffer from any illness and does not need medical help.

66. Carrying out these medical examinations is recorded in the relevant files. Sanctioning, realization in practice and procedures for guaranteeing and providing medical care are set out in the "Procedures Manual on the Treatment and Security of Arrested/Detained Persons in Police Units", approved by Order No. 763, dated 27.11.2011, of the General Director of State Police.

67. Domestic Legislation (Law on State Police and Criminal Procedure Code) and the aforementioned Manual have determined that the notification of family or a person selected by the arrested/detainee, who is a minor for the country and the situation in which is involved is compulsory, and for other adult persons, according to their choice. Also, for foreign nationals, the Ministry for Europe and Foreign Affairs and the relevant Diplomatic Representation are immediately informed. The premises of the State Police security rooms have been and remain the subject of inspections/visits of the People´s Advocate, civil society organizations that protect human rights, the Prosecutor's Office as the investigating authority, as well as many other organizations EC and UN, for the protection of human rights.

68. State Police has enabled local government institutions, NGOs/NPOs and international organizations to carry out continuous visits and inspections, to the premises where these persons are kept and treated, to the treatment provided to them, to the fulfilment of the conditions and to the respect of the rights provided by law.

69. Serving this purpose, several joint-initiative agreements with NGOs/NPOs have been drafted and signed:

- Cooperation Agreement between the State Police and the European Institute of Tirana;

- Cooperation Agreement between the State Police and the Albanian Helsinki Committee;
- Cooperation Agreement between the Albanian Rehabilitation Center for Trauma and Torture;
- Cooperation Agreement between the State Police and the Center for Human Rights in Democracy.

70. State Police, by order No. 158, dated 12.04.2012, "On Reforming the Registries of Data Recording for Escorted Persons, in Police Directorates and Police Commissariats", has produced and put in place special registers for the provision and reporting of data for arrested/detained persons in security rooms.

71. These registers are filed in the police archive/registries, administered by the personnel responsible for handling such persons, and after completion/filling-in, this register is kept in storage according to the rules and procedures for this purpose.

72. Based on the requirements of Article 103 "On the data of escorted, arrested and detained citizens" of the Law "On the State Police", by special order of the General Director of Police was created and put into operation the Electronic Registry (ADAM system). This register is used for data entry for escorted, arrested and detained persons, which has been operating in all local police units since 2010. The information on these persons is filed/recorded and registered, beginning from the moment of deprivation of freedom, the actions carried out in the security rooms, the health service provided, the meetings with the lawyer, the meetings and the visits made by the representative the People's Advocate or NGO/NPO, the security measure assigned by the court and transferring it to the IECD (Institution of Execution of Criminal Decisions).

73. As regards Article 18 of the Convention, the Code of Criminal Procedure as well as the "Manual of Standards Rules and Procedures for the Treatment and Detention of Arrested/Detained Persons in Police Units" have defined and guaranteed the right, that the person shall be informed to the rights entitled at the beginning of the deprivation of freedom.

74. For this purpose, with a special order of the General Director of State Police, a written format for the rights of the arrested/detained persons has been formatted, produced and implemented, which is conceived in the form of a statement, which shall be given to the person at the time of arrest/detention, which, after being informed, it signed in two copies.

75. One copy is kept by the arrested/detained person and the other is administered by the police personnel responsible for the security rooms. Also, family members, relatives or other persons designated by the arrested/detainees are informed about the whereabouts of the person, their state of health, the assistance they have received with a lawyer, and so on.

76. Likewise, the defence lawyer is introduced with all the procedural acts that are administered in the files of criminal proceedings, conducts meetings and talks with the client (the arrested/detained person) at any time and without the presence of other persons. The Penal Code of the Republic of Albania has foreseen, among other things the "torture" as a criminal offense, which is related to the acts and inactions committed by officials and representatives of the law to obtain information and data on various criminal offenses, through the practice of violence, mistreatment and torture. The State Police Institution, through its administrative acts producing and monitoring continuously all State Police Officials, to perform their duty in accordance with the law, not to use physical force outside the foreseen legal conditions and procedures, categorically prohibiting the exercise physical/psychological violence or other physical mistreatment, to persons to obtain data, information and statements relating to the commission or not of various criminal offenses.

77. An important innovation in the reform of the justice system is the introduction into the criminal procedural law of the Victim concept. Thus, with the amendments of the Criminal Procedure Code, the position of the victim is regulated and improved. Article 9/c of the Criminal Code (Amended by Law 35/2017) provides that public institutions should ensure that victims of the offense are treated with respect for their human dignity and protected from re-injury during the exercise of their rights provided by this Code.

78. Further on, Articles 58 and following of the Criminal Procedure Code provide for a number of procedural and substantive rights that can be practiced by the victims of crime. Also, on 01.01.2018, the "Juvenile Justice Code" enters into force, which complements the legal framework in accordance with the UN Conventions and aims to guarantee other international standards and norms aimed, inter alia, protection of juvenile crime victims. Regarding protective measures for witnesses, the special legislation provides for cases and concrete means of protection. In these cases, in principle are included the witnesses of enforced disappearances, because protective measures for witnesses are related to serious criminal offences involving also the enforced disappearances.

79. The General Directorate of Prisons is the institution responsible for organizing, directing and controlling the execution of penal decisions by imprisonment and with an "arrest in prison" security measure throughout the prison system.

80. The Institution takes appropriate measures to respect the rules regarding the organization and functioning of the Institutions of Execution of Criminal Decisions (IECD), in accordance with national and international human rights standards. All data of persons deprived of their freedom are compiled and registered in a regular and up-to-date manner. The Jurisdictional and Record Sector in IECD has the primary responsibility for the regular updating, compilation and storage of prisoner records as well as their registration. Article 11 of the General Regulation of Prisons approved by the Decision of the Council of Ministers No. 437 dated 20.05.2015, stipulates that with the appearance of detainees or the convicted in the institution of execution of criminal decisions, the respective employees verify the identity and accuracy of his documentation. When the identity and documentation is correct, the minutes of the reception of detainees or convicts, accompanying documents and personal belongings are drafted. The record shall indicate the date and time of acceptance. In cases where doubts arise about the identity of detainees or convicted or resulting in discrepancies in the documentation, the judicial police officer and the prosecutor who has ordered the execution of the final criminal decision are immediately notified.

81. The staff in charge of the institution registers the detainees or convicted persons in the basic register. Article 17 of the General Regulation of Prisons provides for the establishment of the Preliminary Register of Detainees and Prisoners, which includes the elements provided for in Article 17, paragraph 3 of the Convention. In each IECD is kept a basic register of detainees and prisoners in which the following data:

- Complete information on the identity of detainees or convicted (name, father, surname, date of birth, birthplace, place of residence, relatives with whom he/she may communicate, etc.);
- Information regarding the criminal offense (the criminal offense committed, punishment sentence, the court that issued the decision, the number and date of the decision, the date of the arrest, the place where the arrest was made, the date and order of the prosecutor for the execution of the decision, later that changes the previous decision or brings consequences to its execution, any amnesty, forgiveness, etc.);
- Date, time of acceptance and release. In case of death detainees or convicted persons shall state in the basic register of detainees or convicted the date, the place and time of death, the cause of death, the copy of the act of death and the person or authority to whom the body is delivered.

82. Pursuant to the General Regulation of Prisons, the following registers are opened: (a) The basic register of convicted; (b) The basic register of detainees; (c) Personal file of the prisoner; (d) psycho-social dossier; (e) Health record; (f) Register of Claims-Complaints; (g) The Register of Disciplinary Measures; (h) Register of pre-release relief; (i) Register of prisoners' permits; (j) Register of serious events; (k) Register of decrease of sentence; (l) Register of medical visits; (m) 24 hour activity Register; (n) Employment Register.

83. During this period, there have been no cases of non-registration of persons deprived of their freedom in the basic registers of prisoners. Inspections are carried out by the General Directorate for verifying the completion of the legal files of prisoners. Additionally, multidisciplinary staff training including issues of legal enforcement aspects in the IECD is conducted by the prison directorate.

84. The handling of personal data in the prison system is carried out according to the provisions of Law No. 9887, dated 10 March 2008 "On the protection of personal data". The new General Regulation of Prisons adopted in 2015 aimed to improve the rights of prisoners and detainees in terms of guaranteeing the protection, preservation and security of personal data. Article 18 of the General Regulation of Prisons provides that the staff of the General Directorate of Prisons and Prisons shall apply the applicable legislation on the protection of personal data, including the decisions or instructions of the Commissioner for the Protection of Personal Data in order to achieve of an adequate security level when processing personal data of detainees or convicted through the use of work tools. The act or inaction, contrary to this provision, constitutes a disciplinary breach and is punishable under the applicable legislation governing the employment relationship of the staff.

85. Article 19 of the General Regulation of Prisons provides that personal data concerning detainees and convicted should be administered in accordance with legal requirements and may be known to the Minister of Justice, the Director General of Prisons, the Director of Police, the Director IECD, the Authority of Safety and Security and any other authority in accordance with the legislation in force or by persons authorized by them. Persons who, during the exercise of their functions, are made aware of personal data, are obliged to retain and not disclose this information upon termination of duty. These data may be issued only in cases provided for by law.

86. Personal data for each convicted person is administered in certified and approved registers. A detainee or a convicted person or a person authorized by him may request the Director of the IECD to be informed to his or her personal data by declaring to the Director the cause and type of information he/she needs. The Director of the IECD should ensure that the information provided does not relate to a detainee or other convicted person. If the information is required by a third person, the prior written consent of the detainees or convicted person must be obtained prior to giving it, unless otherwise provided by the applicable legal provisions. For the witnesses and collaborators of justice, the applicable legislation applies to the administration of their personal data. Detainees and convicted are entitled to the right to make requests and make complaints about law enforcement and internal rules. Article 49 and 50 of Law No. 8328, dated 16.4.1998 "On the Rights and Treatment of Detainees and Prisoners", as amended, provides for the right to submit written or verbal applications or complaints to the staff of the institution, the General Directorate of Prisons, the Minister of Justice, the People's Advocate, international organizations, local and foreign NGOs, the court of execution of the criminal decision, the prosecutor at the judicial district court, and other persons visiting the institution, according to Article 43 this law. After having been registered in a separate register, the claims or complaints are submitted to the director of the institution, who charges the relevant employee for the solution and return of the response to the detainees and convicted persons. Each institution maintains and updates the register of requests or appeals to prisoners and detainees, in written and electronic form. The format and contents of the registry, as well as the procedure for returning the response, are set out in the General Regulation of Prisons. The competent authorities shall review the complaints and requests as soon as possible, but no later than one month after their submission, except when there are special deadlines with special provisions. The prisoner has the right to complain to the highest instances of the prison system and, when this complaint is not resolved in an administrative way or by a given decision, the prisoner may address to the court of the place where the institution is located. Law No. 114/2014 "On Human Rights" provides for sanctions for public state institutions in the case of refusal to provide information without justified motivation.

87. The Republic of Albania has ratified a number of international acts to ensure the prohibition of torture, punishment or other cruel, inhuman or degrading treatment, Law No. 9453, dated 15.12.2005 "On the ratification of Protocol No. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms"; Law No. 9094, dated 03.07.2003 "On the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". Also, a number of legislative, administrative and judicial measures are in place to guarantee the prohibition of torture, punishment or other cruel, inhuman or degrading treatment, as provided in the Constitution of the Republic of Albania (Article 15, Article 18, Article 25, Article 26, Article 27, Article 28, Article 43, Article 48). Article 5 of the Code of Criminal Procedure of the

Republic of Albania states: "No one shall be subjected to torture, punishment or humiliating treatment." By law No. 9397, dated 12.05.2005 "On the internal control service in the prison system", amended, is established and functions the internal prison service. Law No. 8331/1998 "On the Execution of Penal Decisions", as amended, foresees the conduct of the Prosecutor's control, inter alia, also through the search of direct information and verifications on the verification of cases and appeals for denigrating treatment.

88. The People's Advocate Institution is guided by the principles of impartiality, confidentiality, professionalism and independence exercises its activity in the protection of human rights and freedoms provided for in constitutional provisions and laws and is entitled to make recommendations and to propose measures when there are cases of violation of human rights and freedoms by the public administration.

89. We have information about the victim's right to receive compensation and to be promptly and fairly remedied, the Criminal Procedure Code provides that the victim of a criminal offense has the right to seek compensation for the damage and to be accepted as a civil claimant in criminal proceedings (Article 58 letter g).

90. We have information about the victim's right to receive compensation and to be promptly and fairly indemnified, the Criminal Procedure Code provides that the victim of a criminal offense is entitled to seek compensation for the damage and to be accepted as a civil claimant in criminal proceedings (Article 58 letter g).

91. Regarding the point where the Criminal Code provides for the prohibition of deportation, surrender, restitution or extradition, one of the cases provided for in Article 11 of the Criminal Code when extradition is not permitted, we bring the provision of Article 11 (c), according to which extradition permitted when there is reason to suspect that the wanted person to be extradited will be persecuted, punished or sought for reasons of his political, religious, national, racial or ethnic convictions.

92. Regarding the information required if law No. 121/2014 "On the Right to Asylum in the Republic of Albania" explicitly mentions the risk of being subjected to enforced disappearance as a basis for non-refoulement, we can say that the provision of this law is in alignement with the convention because this the law explicitly provides the principle of non-refoulement as follows:

> **Article 6**
> **Principle of Non-Refoulement**
>
> 1. The Republic of Albania recognizes and respects the obligation of the authorities not to return, extradite or expel from its territory persons who have benefited or requested the right of asylum or other forms of protection in these cases:
>
> (c) In a country where there are reasons to believe that asylum seeker may be in danger of being subjected to enforced disappearance.
>
> **Article 9**
> **Safe Third Country**
>
> The implementation of the safe third country concept is only carried out when the competent authorities have established the reasonable conviction that the asylum-seeker shall be treated in the third country in accordance with the following principles:
>
> (c) Prohibition of expulsion if the right to prohibition from torture and inhuman or degrading treatment is violated and the right not to be subject to enforced disappearance as defined by international law;

93. Regarding the information required by letter b of point 15 of this report, if it is possible to appeal for a deportation, return, and surrender or extradition decision and, if so, which procedures are applicable and if they have suspensive effect, after consultation with the relevant legal framework can bring the provisions of these articles of the Criminal Procedure Code:

- Article 494 concerning the temporary application of coercive measures;
- Article 495 concerning arrest by police and the rights of the person;

- Article 496 relating to the hearing of the person against whom a disciplinary measure has been imposed by the court;
- Article 497 regarding the examination of the request for extradition;
- Article 498 relating to the decision of a court and the right of a person to appeal the court decision to the court of appeal within 10 days.

94. The Criminal Code:

Article 110
Unlawful detention

Unlawful detention of a person constitutes criminal contravention and is punishable by fine or imprisonment of up to one year.

When this act is accompanied by severe physical suffering, committed in complicity against several persons or more than once, is punished by imprisonment of from three to seven years.

This article has a general subject, not necessarily this offence is carried out by a public official. This article covers any deprivation of liberty committed by individuals/natural persons, without the need for such persons to act as part of state bodies or to perform public functions.

Also, as mentioned in paragraph 148 of the report, there is no specific provision in the Criminal Code regarding the illegal prohibition, hence this is largely a general provision. The Criminal Procedure Code contains provisions regarding the time of detention in accordance with the criminal offense committed.

Article 263
Pre-detention term

1. Pre-detention shall be void if the following terms have expired since the beginning of its application, without the submission of the acts to the court:

(a) Three months, in case of criminal offence proceedings;

(b) Six months, in case of proceedings for crimes that are sentenced to a maximum of ten years of imprisonment;

(c) Twelve months, in case of proceedings for crimes that are sentenced to a maximum of not less than ten years of imprisonment or life imprisonment.

2. Pre-detention shall be void if, from the day of submission of the acts to the court, the following terms have expired, without the first instance conviction decision being rendered:

(a) Two months in case of proceedings for criminal offence;

(b) Nine months, in case of proceedings for crimes sentenced to a maximum of ten years of imprisonment;

(c) Twelve months, in case of proceedings for crimes that are sentenced to a maximum of not less than ten years of imprisonment or life imprisonment.

3. Pre-detention shall be void if, from the day of the first instance conviction decision, the following terms have expired, without the sentence in the Court of Appeal being rendered:

(a) Two months, in case of proceedings for criminal offence;

(b) Six months, in case of proceedings for crimes that are sentenced to a maximum of ten years of imprisonment;

(c) Nine months, in case of proceedings for crimes sentenced to a maximum of ten years of imprisonment.

4. In the event when a decision is refused by the Supreme Court and the case is referred to the Court of First Instance or Court of Appeal, and when the decision is refused by the Court of Appeal and sent to the Court of First Instance, from the day when the decision of the Supreme Court of the Appeal Court, the provided deadlines shall resume for each degree of proceeding.

5. In the event of escape of the pre-detained defendant, the term shall start from the moment he/she is detained again.

6. The total duration of the pre-detention, taking into account the extension provided for in Article 264, paragraph 2, may not exceed the following terms:

(a) Ten months, in case of proceedings for criminal offence;

(b) Two years, in case of proceedings for crimes punishable to a maximum of ten years of imprisonment;

(c) Three years, in case of proceedings for crimes punishable by a maximum of not less than ten years of imprisonment or life imprisonment.

7. When, at the end of the pre-detention period, the prosecutor communicates to the defendant a new charge for which longer period of detention compared to the first charge is provided, he shall require the court to designate a new term of pre-detention period. The court decides in court trial after hearing the parties.

8. When the new charge relates to a new fact not known at the beginning of the proceedings, the court sets a new deadline which starts to be counted from the beginning, whereas when there are changes only to the legal qualification of the criminal offence, the court sets the measure of insurance and the beginning of calculation of the term shall be the previous one.

Article 268 of the Code of Criminal Procedure
Application requirements

1. One who is acquitted by a final decision, has the right to be compensated for the time served under pre-detention, except in cases when it is proved that the wrong decision or non discovery in due time of the unknown fact, is caused, wholly or in part, by him.

2. The same right applies also to a convicted person, who has been under pre-detention, when it is proved by a final decision that the decision which assigned the remand order, is issued without complying when the requirements provided for under articles 228 and 229.3.

95. Likewise, Law No. 9381 dated on 28 April 2005 "On the Compensation of Unjust Imprisonment" provides for detailed rules concerning the cases of benefit and compensation for unjust imprisonment, including the house arrest, the term and the way of its calculation, as well as the procedures for seeking, paying and compensating unjust imprisonment. This law provides that a person who has been declared innocent or for whom the case has been dismissed by a final decision of the court or prosecutor's office, or is held in prison beyond the time stipulated in the sentence, shall be entitled to compensation for the injustice claimed. With regard to immediate notification, access to the lawyer, notification of family members in cases of deprivation of liberty, the amended Criminal Procedure Code provides for all the rights of the arrested and detained person under Article 34(b) (mentioned above).

96. Regarding the measures taken to ensure that all data of persons deprived of their liberty have been compiled with and kept in a regular and up-to-date manner, we underline that the General Directorate of Prisons is the institution responsible for the organization, direction and control of the execution of criminal decisions by imprisonment and with a security measure "prison arrest" throughout the prison system. The Institution takes appropriate measures to comply with the rules regarding the organization and functioning of the Institutions of the Execution of Criminal Decisions (IECD), in accordance with national and international human rights standards. All data of persons deprived of their liberty are compiled with and kept in a regular and up-to-date manner. The Legal and File Recording Sector in the IECD has the primary responsibility for the regular updating, compilation and

maintenance of prisoner records, as well as their registration. Article 11 of the General Regulation of Prisons approved by Decision of the Council of Ministers No. 437 dated 20.05.2015, stipulates that with the appearance of the pre-detainees or detainees in the IECD, the respective employees shall verify the identity and accuracy of his documentation. When the identity and documentation is correct, the minutes of the reception of the pre-detainee or detainee is drafted, together with accompanying documents and personal belongings. The record shall indicate the date and time of receipt. In those cases where there is ground to suspect about the identity of pre-detainee or detainee, or in case there are discrepancies in the documentation, the judicial police officer and the prosecutor who has ordered the execution of the final criminal decision are immediately notified. The staff of the institution in charge shall register the pre-detainee or the detainees in the basic register. Article 17 of the General Regulation of Prisons provides for the establishment of the Preliminary Register of Prisoners and Pre-detainees, which include the elements provided for in Article 17 (3) of the Convention. Each pre-detainee or detainee is registered in the basic register of the pre-detainees or detainees in each IECD, including the following data:

- Complete information on the identity of the pre-detainee or detainee (name, fatherhood, surname, date of birth, place of birth, residence, relatives with whom he can communicate, etc.);
- Information regarding the criminal offence (the criminal offence committed, punishment, court that issued the decision, number and date of the decision, date of the arrest, place of arrest, date and order of the prosecutor for the execution of the decision, any subsequent decision that changes the previous decision or brings consequences to its execution, any amnesty, forgiveness, etc.);
- Date, time of acceptance and release. In case of death of the pre-detainee or detainee, the date, the place and time of death, the cause of death, copy of the death certificate and the person or authority to whom the body is delivered shall be registered in the basic register of the pre-detained or convicted person.

97. Pursuant to the General Regulation of Prisons, the following registers are opened: (a) the basic register of detainees; (b) The basic register of pre-detainees; (c) Personal file of the prisoner; (d) Psycho-social file; (e) Health-care file; (f) Register of Claims-Complaints; (g) Register of disciplinary measures; (h) Register of release of the person in custody; (i) Register of prisoners' permits; (j) Register of serious events; (k) Register of reduction of conviction; (l) Register of medical visits, (m) 24 hour activity register; (n) Employment Register.

98. During this period, no cases of non-registration of persons deprived of their liberty in the basic registers of prisoners. Inspections are carried out by the General Directorate for the verification of the completion of the legal files of prisoners.

99. With regards to information on any domestic law providing restrictions on access to information for persons deprived of their liberty, as well as the nature and duration of such restrictions and mechanisms of appeal against refusal to provide information on persons deprived of their liberty and provision of information in due time following consultation with the legal framework, we observe that the treatment of personal data in the prison system is carried out according to the provisions of Law No. 9887, dated 10.03.2008 "On the protection of personal data". The new General Regulation of Prisons adopted in 2015 aimed to improve the rights of detainees and pre-detainees in terms of guaranteeing the protection, preservation and security of personal data. Article 18 of the General Regulation of Prisons provides that the staff of the General Directorate of Prisons and IECDs shall apply the applicable legislation on the protection of personal data, including the decisions or instructions of the Commissioner for the Protection of Personal Data, in order to achieve an adequate security level when processing personal data of the detainees or pre-detainees through the use of work tools. The act or omission, contrary to this provision, constitutes a disciplinary offence and is punishable under the applicable legislation governing the employment relationship of the staff. Article 19 of the General Regulation of Prisons provides that personal data concerning detainees and-pre-detainees should be administered in accordance with legal requirements and may notified by the Minister of Justice, the General Director of Prisons, the Director of Police, the Director the IECD, persons in charge for the security, and any other authority in

accordance with the legislation in force or by persons authorized by them. Persons who, during the exercise of their functions, are informed on personal data, shall be obliged to retain and not disclose this information upon termination of office. These data may be issued only in cases provided for by law. Personal data for each convicted person is administered in certified and approved registers. The detainees or pre-detainees or a person authorized by him/her, may request the Director of the IECD to be informed on his or her personal data, by informing the Director on the cause and type of information needed. The Director of the IECD shall ensure that the information provided does not relate to any other pre-detainee or detainees. If the information is required by a third person, the prior written consent of the pre-detainee or detainee should be obtained, unless otherwise provided by the legal provisions in force. For the witnesses and collaborators of justice, the applicable legislation applies to the administration of their personal data. The pre-detainees and detainees shall be entitled to submit requests and make complaints about law enforcement and internal rules. Articles 49 and 50 of Law No. 8328, dated on 16.4.1998 "On the Rights and Treatment of Pre-Detainees and Detainees", as amended, provides for the right to submit written or verbal notifications or complaints to the staff of the institution, the General Directorate of Prisons, the Minister of Justice, the People's Advocate, international organizations, local and foreign NGOs, the court of the country of execution of the criminal decision, the prosecutor at the judicial district court, and other persons visiting the institution, according to Article 43 this law. After being registered in a separate register, the claims or complaints are submitted to the director of the institution, who charges the relevant employee for providing solution and reply to the pre-detainees and detainees. Each institution maintains and updates the register of requests or complaints of detainees and pre-detainees, in written and electronic form. The format and contents of the registry, as well as the procedure of reply, are set out in the General Regulation of Prisons. The competent authorities shall review the complaints and requests as soon as possible, but no later than 1 month after their submission, except when there are special deadlines with special provisions. The prisoner has the right to complain to the highest instances of the prison system and, when this complaint is not resolved in an administrative way or against a rendered decision, the prisoner may address the district court where the institution is located.

100. Law No. 119/2014 "On the Right to Information" provides for some sanctions for public state institutions in the case of refusal to provide information without justified arguments. The Republic of Albania has ratified a number of international acts to ensure the prohibition of torture, punishment or other cruel, inhuman or degrading treatment, such as. Law No. 9453, dated 15.12.2005 "On the ratification of Protocol No. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms"; Law No. 9094, dated 03.07.2003 "On the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". Also, a number of legislative, administrative and judicial measures are in place to guarantee the prohibition of torture, punishment or other cruel, inhuman or degrading treatment, as provided for in the Constitution of the Republic of Albania (Article 15, Article 18, Article 25, Article 26, Article 27, Article 28, Article 43, Article 48). Article 5 of the Code of Criminal Procedure of the Republic of Albania stipulates: "No one may be subjected to torture or humiliating punishment or treatment." Pursuant to law No. 9397, dated 12.05.2005 "On the internal control service in the prison system", as amended, the internal control service in prisons was established and is operational. Law No. 8331/1998 "On the Execution of Criminal Decisions", as amended, provides for the conduct of the Prosecutor's control, inter alia, through the request of direct information and verifications on the verification of cases and complaints for denigrating treatment. The People's Advocate Institution governed by the principles of impartiality, confidentiality, professionalism and independence, exercises its activity in the protection of human rights and freedoms provided for in constitutional provisions and laws and is entitled to make recommendations and to propose measures in case of violation of human rights and freedoms by public administration.

101. Regarding the mechanisms to prevent unlawful deprivation of freedom, the Criminal Procedure Code provides that a person's freedom may be limited to security measures only in the cases and in the ways provided for by law. Title V of the Criminal Code regarding the imposition of security measures provides for the right of the person to be informed of any decision taken against him and the right to appeal.

102. As regards to the trainings on the provisions of the Convention, we are informed that the General Directorate of Prisons is conducting multidisciplinary staff training, including issues of legal enforcement aspects in the IECD.

103. Acknowledging the importance of this process, in view of the statistics generated on the number of individual requests submitted by the applicants, based on their subject and as legalised and addressed during the meetings of the Authority, we find it reasonable to follow the following procedures for the possibility to identify the place where these persons have disappeared, or of persons who have been killed by persecutors of the dictatorial regime, persons whose grave is not yet known, although it is not included as a priority in the AIFSDD, as provided for by law. For this purpose, AIFSDD considers the inclusion in this process because, due to a considerable number of requests (21 cases), individuals, in addition to being informed on the files compiled which relate to their relatives, are interested and seek clarification of the destiny of the disappeared and persons dead in prisons, as well as persons shot with and without trial during the communist regime. AIFSDD has paid special attention to every case in addressing the files and documentation under review. Likewise, communications with individuals, families of the missing persons have been carried out, such as the activity held at the Tepelena Camp Memorial on 30 August 2017, on the International Day of the Missing Persons. On the progress of the Authority and the steps taken to shed light on the files of the former State Security, we would like to inform you that: Law No. 45/2015 provides for the exercise of the right of everyone interested in informing the former State Security documents through a democratic and transparent process, protecting the personality of the individual, as well as the unity of national reconciliation, for the former Security Documents of the State of the Ministry of Internal Affairs of the People's Socialist Republic of Albania, for the period 29 November 1944 until the day of the creation of the National Intelligence Service, dated on July 2, 1991, which are available from all archives of the archive network of the Republic of Albania. In accomplishing the above purpose, AIFSDD adheres to:

- Correct and full implementation of constitutional and legal norms in the organization and administration of this process;
- The expansion and consolidation of a new culture for all types of researchers, including civic education activities;
- Capacity building and human resources performance within this directorate, through qualitative, professional and periodic training;
- Increase control and transparency of the process at all stages where it passes.

Recommendation V: Measures for Compensation and Protection of Children against Violent Disappearances (Articles 24 and 25)

104. Related to the victim's right to be informed about the conduct of the investigation, the results of the investigation in accordance with Article 24(2) of the Convention, the Code of Criminal Procedure (Article 58) provides that the victim of a criminal offence has the right:

> (d) To request at any time, information on the state of the proceedings and to be acquainted with the acts of the evidence, without prejudice to the principle of investigative secrecy;
>
> (f) To request evidence, and to file further requests before the proceeding authority;
>
> (g) To be informed about the arrest of the accused and his release, under the conditions set forth herein;
>
> (h) To be notified of the non-initiation of the proceedings, the dismissal of the case, the commencement and conclusion of the trial;
>
> (i) To file an appeal in court against the decision of the prosecutor to stop the proceedings from starting and against the decision of the prosecutor or the judge of the preliminary hearing session to cease the charge or the case.

105. Related to the victim's right to receive compensation, Article 58 of the Criminal Procedure Code provides that the victim of a criminal offence has the right to:

(j) Request compensation of the damage and be accepted as a civil claimant in the criminal process;

(k) Be excluded, under conditions determined by law, from the payment of any expenses for obtaining acts and court fees for filing a lawsuit related to the status of the victim of the offence. Paragraph 4 of this Article provides that the heirs of the victim have the rights provided for in paragraphs (a), (e), (e), (f), (g) and (j) of paragraph 1 of this article. If the heir of the victim is a minor, he/she is represented by the legal custodian.

106. Related to the right to receive compensation, the Criminal Procedure Code provides:

Article 268
Terms of implementation

1. One who is acquitted by a final decision, has the right to be compensated for the time served under pre-detention, except in cases when it is proved that the wrong decision or non discovery in due time of the unknown fact, is caused, wholly or in part, by him.

2. The same right applies also to a convicted person, who has been under pre-detention, when it is proved by a final decision that the decision which assigned the remand order, is issued without complying when the requirements provided for under articles 228 and 229.

107. Also, Law No. 9381, dated 28 April 2005 "On compensation for unjust imprisonment", provides detailed rules regarding benefit and compensation cases for unjust imprisonment, including house arrest and the extent and manner of its calculation, such as and procedures for seeking, paying and compensating for unjust imprisonment. This law provides that the person who has been declared innocent or for whom the case has been terminated by a final court decision or the prosecutor or is held in prison beyond the time limit set in the sentence, enjoys the right to compensation for imprisonment suffered.

108. The provision of the last paragraph of Article 109/c of the Criminal Code is in full compliance with the provision of Article 25(a) of the Convention relating to the measures necessary to prevent and punish children under the age of enforced disappearance or children, whose father, mother or legal representative has been subjected to enforced disappearance or to children born during slavery subject to enforced disappearance. In accordance with domestic legislation and international acts, the highest interest of a minor prevails in every case. Also, Law No. 9695, dated 19.03.2007 "On the Adoption Procedures and the Albanian Adoption Committee" stipulates that the Adoption Committee has the duty to take the necessary measures to avoid the failure of adoptions, unfair benefits and any kind of activity, aimed at child trafficking.

109. The State Agency for the Rights and Protection of the Child is a central institution, depended to the Ministry of Health and Social Protection, which is responsible for coordinating and organizing the integrated child protection system, including the implementation of interventions and the taking of measures to prevent and protect the child from abuse, neglect, mistreatment and violence. The Law No. 18/2017 "On the Rights and Protection of the Child" entered into force on 09.06.2017, which was adopted in parliament on February 23, 2017. The law aims to fulfil the constitutional obligation to guarantee the right of children, for special protection from the state. The goal is to establish an effective child protection system based on a strong cross-sectorial cooperation and strengthen the system's responsibility to the prevention and protection of children from all forms of violence.

110. Law No. 18/2017 "On the Rights and Protection of Children" does not provide for procedures, terms for compensation and protection of children against enforced disappearance but provides for protection measures that can be applied to Child Protection Officers when they find out cases of children who are in a risk situation due to violence, abuse, neglect or exploitation. A child who may have been subject to enforced disappearance can guarantee the protection provided by the law, be treated by the relevant structures, and

benefit from the services, interventions and, if necessary, protection measures may be applied to it. The first part of the law deals with the rights of the child and the scope of its implementation.

111. Law No. 18/2017 applies to:

(a) A child of Albanian citizenship, without citizenship or with foreign citizenship, located within the territory of the Republic of Albania;

(b) A child of Albanian citizenship, located outside the territory of the Republic of Albania.

112. The rights provided for in this Law relating to the provisions of Articles 24 and 25 of the Convention on the ratification of the UN International Convention "On the Protection of All Persons from Enforced Disappearance" are as follows:

(a) Article 9 of the law provides for the right of the child to remain with the parents. A child separated by one or both parents has the right to ask for detailed information about the place where the parent or family member is located, when they are detained, arrested, detained, exiled, expelled or when they have died, for any reason, unless the disclosure of this information harms his / her well-being. Parents and other family members have the right to ask for information about a child's residence, which has been separated from parents due to detention, imprisonment, removal from the place of residence or death during the deprivation of liberty, unless such a thing damages the child's well-being. In the event of failure to provide information, the parent or other family members have the right to address the court, which decides whether the non-disclosure of the information is grounded;

(b) Article 8 of the law guarantees the right of a child to have a name, citizenship, to know the parents and to preserve the identity. Also, the child is guaranteed the right to identity, including the determination of the surname, acquisition of citizenship and recognition of family ties, in accordance with the legislation in force, without unlawful interference. If a child is unlawfully deprived of one or more elements of his or her identity, he or she will be provided with the appropriate assistance to restore him/her to identity, including ensuring the care of state institutions, to give him the opportunity to practice religion, culture and language of origin. The assistance includes finding of parents, finding relatives or relatives of a child, refugee and asilium seeker, for the purposes of family reunification, registration of any change of the child's identity, such as name, citizenship, parental rights;

(c) The child is guaranteed the right to family reunification (Article 10 of the law). The child has the right to seek to enter or leave the Republic of Albania for reasons of family reunion with his parents being treated with a positive, humane and rapid spirit and is refused only when there is reason to suspected that entry or departure is not in the best interest of the child. If parents are illegal immigrants in the Republic of Albania and the child has acquired Albanian citizenship, parents are allowed to stay in the Republic of Albania and not leave the country;

(d) The child is also granted the right to move from the place of residence or to ensure return to his / her country of origin (Article 11). Displacement of the child inside or outside the country is done by the agreement of both parents or, in the event of a dispute between them, by a court decision after the opinion or consent of the child informed of the general social, economic situation and services can be offered in the country of origin. The unaccompanied child of the parent or guardian has the right to return, as soon as possible. Return to the country of origin is only done if it is in the highest interest of the child by assessing the aspects related to the child's safety, its integration into the place where it will be returned, and its possibilities to preserve the identity, nationality, name and family ties, taking into account the child's opinion or consent, in accordance with his age and ability to understand. For cases involving unaccompanied children, the diplomatic service of the Republic of Albania abroad informs the ministry responsible for foreign affairs, whereas in cases involving children accompanied only by one parent and without the consent of the other parent, the Ministry of Justice is notified. These bodies take immediate measures to return the child to Albania, according to the rules of law No. 9446, dated 24.11.2005, "On the ratification of the Convention on Civil Aspects of International Child Abduction". The parent,

guardian of the child or any person who knows about the loss of his or her child must notify within 24 hours the responsible state authority to enable the child to return quickly and safely. Enforcement of the child's highest interest is the primary consideration in all decisions and actions taken with regard to the child.

113. On 26.04.2017 with the Decision of the Council of Ministers No. 372 adopted the National Agenda for the Rights of the Child 2017-2020, which aims to achieve the effective protection and promotion of children's rights in the Republic of Albania by applying international and national standards in this field and promoting an integrated approach and inclusive for children's rights. The Agenda represents a multi-disciplinary and systematic framework, which should be integrated into all national, local, child-related documents, plans and other activities, in the spirit of the UN Convention on the Rights of the Child. The agenda is guided by the principle of the highest interest of the child and has as a vision the creation of a favorable environment for the safe and healthy growth of children, the development of the maximum physical and psychosocial potential of children, social inclusion and active participation in all areas that affect their lives, as well as guaranteeing the assessment of the progress of children's rights in key public policy areas related to children. Based on the vision of this agenda, the main strategic goals are formulated with the respective objectives.

114. The strategic pillars of the Agenda are: (i) Good Governance in Promoting, Respecting and Protecting Children's Rights; (ii) Elimination of all forms of violence against children; and (iii). Friendly Systems and Services for Children and Adolescents: Development and Education, Justice, Health and Nutrition, and Social Protection. The approach used as a shaft for the agenda is that of children's rights. This approach regards each child as a unique and equally valuable human being, entitled not only to live and survive but also to develop to the fullest possible potential. Children can express their views by helping anyone to better understand the situation they are in, they can contribute actively to their experience. Children deserve to be fulfilled with higher interest by allocating resources and implementing the foreseen rights. One of the main pillars of this Agenda is the Elimination of All Forms of Violence for Children. This can be ensured through the establishment of an integrated and effective child protection system through a significantly improved legal and institutional framework, as well as addressing various forms of violence against children such as bullying, violence in schools, positive displacement, violence in the family, sexual abuse, economic exploitation and street children, child safety in the digital environment, unaccompanied children or victims of trafficking etc. An important focus is prevention as a key strategy for protecting children from all forms of violence, giving focus to programs aimed at promoting positive non-violent parenting. The main objectives in this chapter are to improve the legal and institutional mechanisms for an integrated and effective child protection system as well as to improve access to child protection services. To achieve these objectives, a number of measures are envisaged, which mainly concern the regulation of the legal framework, the establishment or further development of the capacities of all employees working directly or indirectly with children, through their professional training. Also, measures regarding the monitoring of child labour structures, inspection of the standards of services provided to children, as well as programs for reducing violence, positive involvement, or specialized services for children victims of sexual abuse and forms of child abuse or other serious violent acts.